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FILED
JUL 25 1957
JOHN T. FEY, Clerk

No. 237

In the Supreme Court of the United States

OCTOBER TERM, 1957

LAR DALY, PETITIONER

v.

UNITED STATES OF AMERICA

AND

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AND THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

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The facts in this case are as follows:

(1) In March 1956 petitioner asked the national radio and television networks to give him, as an alleged candidate for the Republican nomination for President, free time equal to that previously given to President Eisenhower. This request was based on Section 315 of the Communications Act of 1934, 47 U. S. C. 315, which requires that equal opportunity to use broadcasting facilities be given to all "legally qualified" candidates for public office. (2) Upon the networks' refusal to grant him such free time, petitioner requested the Commission to require the networks to do so. The Commission, by letter of April

11, 1956, rejected the request, on the ground that petitioner had failed to show that he was a "legally qualified candidate" for the nomination (Pet. App. 7a–8a).[1] (3) On October 3, 1956 petitioner again complained to the Commission about the networks' failure to give him equal time to reply to President Eisenhower, and submitted new documentation purporting to show that he had been a legally qualified candidate for the Republican Presidential nomination. On October 31, 1956 the Commission advised petitioner by letter that since the Republican Party had nominated President Eisenhower as its candidate on August 22, 1956, petitioner could no longer be considered a candidate for the nomination, and therefore was not entitled to free time under the statute (Pet. App. 9a–12a). (4) Petitioner then filed in the Court of Appeals for the Seventh Circuit a petition to review the Commission "order" of October 31, 1956 (Pet. App. 1a). The relief requested was a finding by the court that petitioner had been from February 8 to August 22, 1956 a duly qualified candidate for the Republican Presidential nomination, and a declaration that the Commission's rulings of April 11 and October 31 were "unjustified and invalid in their entirety" (Pet. App. 5a–6a). Upon motion of the United States and Federal Communications Commission, the court of appeals dismissed the petition on the ground that the

[1] On May 3, 1956 the Commission denied reconsideration of its earlier action. Petitioner did not seek judicial review of these rulings, although he did institute in the district court a suit for declaratory relief against the networks in which neither the United States nor the Commission was a party. That suit was dismissed.

case was moot (*id.* 27a–28a), and subsequently denied rehearing (*id.* 101a).

The decision below is clearly correct, and presents no question warranting review. If the Commission's decision in April 1956 that petitioner was not a legally qualified candidate was wrong, petitioner's remedy was to seek judicial review of that decision. This he did not do. The Commission action here sought to be reviewed was its refusal in October 1956 to require the networks to then grant petitioner equal time and to declare that petitioner had been a legally qualified candidate for nomination. But in October 1956, after the Republican Party had nominated its candidate, petitioner was no longer a candidate for the nomination. Petitioner apparently agrees, and does not now seek any order for "free and equal" time (Pet. 33).

The sole remedy petitioner seeks is a declaration that he *had been* a legally qualified candidate between February 8 and August 22, 1956 (Pet. 33). By October 1956 this issue was wholly academic. It did not affect any rights or status of petitioner and could have no bearing on the issue of whether at any future time he would be a legally qualified candidate. *A fortiori*, the question was academic in March 1957, four months after the election, when the court of appeals dismissed the petition for review as moot.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

JULY 1957.

U. S. GOVERNMENT PRINTING OFFICE: 1957